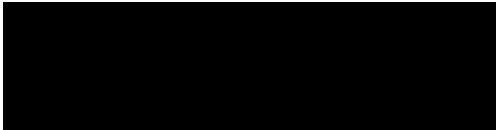


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: PHILADELPHIA, PA

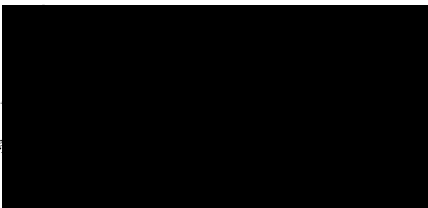
Date:

MAR 16 2004

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former
Immigration and Nationality Act, 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:



PUBLIC COPY
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant was born on October 16, 1978, in Port-Au-Prince, Haiti. The applicant's father, [REDACTED] was born in Haiti on May 20, 1940, and he became a naturalized United States (U.S.) citizen on June 17, 1992, when the applicant was 13 years old. The applicant's mother, [REDACTED] was born in Haiti and has no claim to U.S. citizenship. The record reflects that the applicant's parents never married and that the applicant's mother died on July 12, 1995, when the applicant was 16 years old. The applicant was admitted into the U.S. as a lawful permanent resident on February 20, 1994, when he was 15 years old, pursuant to an immigrant visa petition filed by his father. The applicant presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432.

The district director concluded the applicant had failed to establish that both of his parents became U.S. citizens prior to his 18th birthday. The district director additionally determined that the applicant failed to establish that his parents married and became legally divorced or that his father had been awarded legal custody of the applicant prior to his 18th birthday, as required by section 321 of the former Act. The district director did not address the issue of the applicant's mother's death in his decision.

On appeal, counsel asserts that the applicant's mother (Ms. [REDACTED]) died in Haiti, on July 12, 1995, and that the district director erred in not addressing Ms. [REDACTED] death in his decision. Counsel asserts that Ms. [REDACTED] death occurred when the applicant was 16 years old and while the applicant was permanently residing with his father in the United States. Counsel concludes that the applicant is therefore eligible for U.S. citizenship pursuant to section 321(a)(2) of the former Act. Counsel submits a copy of Ms. [REDACTED] death certificate with a translation, to support his assertions.

Section 321 of the former Act was repealed on February 27, 2001, by the CCA. However, persons who acquired citizenship automatically under former section 321 of the Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Former section 321 of the Act provided, in pertinent part, that:

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased;
or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The AAO finds that the applicant has provided sufficient evidence to establish that his mother died in 1995, when the applicant was 16 years old, and that his father became a naturalized U.S. citizen in 1992, prior to the applicant's 18th birthday. The evidence additionally demonstrates that the applicant was admitted into the U.S. as a lawful permanent resident at the age of 15, and that he began residing permanently in the U.S. prior to his 18th birthday.

The evidence submitted to establish Ms. [REDACTED] death consists of a Haitian death certificate issued on July 4, 1996, by Civil State Officer, [REDACTED] of the [REDACTED] Northern Section of Haiti. The AAO notes several concerns pertaining to the authenticity of Ms. [REDACTED] death certificate. The AAO notes that the death certificate was issued pursuant to the testimony of an alleged witness to Ms. [REDACTED] death, and that neither the record nor the death certificate contain detailed information to clarify the relationship of the witness (Mr. [REDACTED] to Ms. [REDACTED] or the basis of his knowledge of Ms. [REDACTED] death. The AAO additionally notes that the declarant, Mr. [REDACTED] has the same last name as the applicant's mother, and that one of the witnesses to the declaration of Ms. [REDACTED] death has the same last name as the applicant and his father [REDACTED]. The AAO also notes that M [REDACTED] death was not reported until 1996, a year after the date that she purportedly died. Despite the preceding concerns, however, the AAO finds that the evidence in the record reasonably establishes that the death certificate for applicant's mother is authentic and that it therefore constitutes proof of Ms. [REDACTED] death in July 1995.

A memorandum (Memo) dated December 1, 2003, from Immigration and Customs Enforcement (ICE) officials in Port-au-Prince, Haiti, indicates that, the Haitian National Archives clerk was "[a]ble to confirm the authenticity of the name and signature of the Registrar's office appointed in Jacmel in 1996, Mr. [REDACTED]. The memo states further that the authenticity of the applicant's birth certificate was also confirmed. The AAO notes further that the record contains a memo from the ICE, Newark Office of the District Counsel, indicating that, based on their conclusion that the applicant's mother was deceased and that the applicant therefore qualified for U.S. citizenship under section 321(a)(2) of the former Act, District Counsel agreed to terminate removal proceedings against the applicant in April of 2002. In addition, the AAO notes that Ms. [REDACTED] death certificate was issued in 1996, well before the occurrence of either the November 1999, crime for which the applicant was placed into removal proceedings, or the June 2001 filing of his application for naturalization.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met his burden in the present case, and the appeal will be sustained.

ORDER: The appeal is sustained and the application approved.